IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1794

THOMAS A. COUGHLIN III, individually and as Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities, *et al.*,

Petitioners,

—against—

NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN, INC., *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MICHAEL S. LOTTMAN
MURRAY B. SCHNEPS
Willowbrook Review Panel
Room 6325
Two World Trade Center
New York, New York 10047
(212) 488-4770

Attorneys for Respondent Willowbrook Review Panel

CHRISTOPHER A. HANSEN
New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011
(212) 924-7800

KALMAN FINKEL
Attorney in Charge Legal Aid Society, Civil Division
JOHN KIRKLIN
Director of Litigation
CAROL KELLERMANN, of Counsel
Civil Appeals & Law Reform Unit
11 Park Place—8th Floor
New York, New York 10007
(212) 227-2755

JACK BERNSTEIN
Protection & Advocacy System for Developmental Disabilities, Inc.
175 Fifth Avenue
New York, New York 10011
(212) 982-1140

Attorneys for Respondents-Plaintiffs

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Respondents -- the plaintiffs in this class action on behalf of present and former residents of the Willowbrook mental retardation facility, Staten Island, New York, and the court-appointed Willowbrook Review Panel -- respectfully request that this Court deny the petition of some defendant state officials for a writ of certiorari, seeking review of the decision of the Court of Appeals for the Second Circuit which requires provision of additional staff for the Consumer Advisory Board created by the Willowbrook Consent Judgment for the purpose of representing

certain class members' interests under that Judgment. That opinion and the District Court's opinion, which the Court of Appeals affirmed, are contained in the Appendix to the Petition herein at 1a-58a.

STATEMENT OF THE CASE

This suit began more than seven years ago as a class action on behalf of the 5,500 residents of the Willowbrook Developmental Center. (4a)* A preliminary injunction against some of the more egregious practices at Willowbrook was issued in April, 1973, 357 F. Supp. 752 (E.D.N.Y. 1973). In April, 1975, after full trial on the merits, an extensive Consent Judgment regulating virtually all aspects of care for all members of the class was agreed to by the parties and approved by the District Court. 393 F. Supp. 715 (E.D.N.Y. 1975). The instant petition deals with a relatively minor implementation issue which will cost the defendants at most $130,000 per year (19a, 56a).

The Consent Judgment herein established a monitoring body, known as the Willowbrook Review Panel, with authority, inter alia, to issue formal recommendations to the defendants as to steps necessary to achieve or maintain compliance with the Consent Judgment; these recommendations were to be binding upon all parties unless objected to, in which case the District Court would decide the issue. (11a-13a) This provision, like all others

*/ References are to the opinions of the District Court and the Court of Appeals contained in the Appendix to the Petition herein.

in the Judgment, was agreed to by defendant State officials as well as plaintiffs. (12a)

The Willowbrook Consent Judgment also created a Consumer Advisory Board (CAB) made up of present or former institution residents, parents of such individuals, and community leaders, with the responsibility for, inter alia, representing the interests of some 700 otherwise unrepresented class members in connection with such matters as creation and implementation of individual development plans and movement from one residential setting to another. (13a-14a, 15a-16a) As the District Court found, these important tasks proved to be extremely arduous and time-consuming, and could not be accomplished by the CAB without considerable staff assistance. (15a-17a, 45a)

Pursuant to its formal recommendation authority, therefore, the Willowbrook Review Panel recommended the creation and funding of four professional and one clerical staff positions to assist the CAB in carrying out its mandated responsibilities -- in other words, for the purpose of achieving compliance with those portions of the Consent Judgment relating to the CAB. After three days of evidentiary hearings pursuant to the prescribed Consent Judgment procedure, the District Court confirmed the Review Panel's recommendation and ordered its implementation. (34a-58a)

On appeal, the Court of Appeals unanimously affirmed. (1a-33a) The Court of Appeals held that the recommendation in question was within the Review Panel's authority as conferred by the Consent Judgment (21a-24a), and, like the District Court (53a-54a), dismissed the state officials' Eleventh Amendment

arguments as plainly inapplicable (26a). The appellate court also disagreed with the State's contention that the District Court's order was too vague to be enforced. (24a-26a)

REASONS FOR DENYING THE WRIT

I. THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

A. Interpretation of the Consent Judgment.

Petitioners argue that the Court of Appeals failed to follow the admonitions of this Court in United States v. Armour & Co., 402 U.S. 673 (1971), that "the scope of the Consent decree must be discerned within its four corners." United States v. Armour & Co., supra, at 681-682. In this case, however, the Court of Appeals not only recognized the Armour "four corners" rule, but also followed and applied that rule explicitly (21a).

Within the "four corners" of the Consent Judgment in this case is a section that gives the Willowbrook Review Panel the authority to recommend "steps deemed necessary to achieve or maintain compliance with the provisions of this judgment." (11a) The Consent Judgment further provides, within its "four corners," that "all parties to this judgment shall be bound by and shall implement the recommendations of the Review Panel" unless they object to same within 15 days. (11a)

After an objection is filed to a recommendation of the Review Panel, the Judg-

ment provides that "any party may apply to the Court for an order implementing the recommendation to which objection has been taken" (11-12a); it further provides that "jurisdiction is retained by the Court . . . for such further orders as may be necessary or appropriate for the construction of, implementation of, or enforcement of compliance with this judgment or any of the provisions thereof." (58a)

As the Court of Appeals noted:

> Thus it can be seen that the parties knowingly and intentionally delegated to a panel of chosen experts the power to make the initial determination on important matters involving the meaning and interpretation of the Consent Judgment and Appendix A and more particularly the power to apply for enforcement of such recommendations. (12a)

The District Court simply defined the duties of the Consumer Advisory Board under the Judgment (36a-37a, 40a-42a), and held that the hiring of additional staff for the Board, as recommended by the Review Panel pursuant to the above authority, was necessary to achieve compliance with the provisions of the Judgment relating to the CAB. (50a) The petitioners did not contest those findings in the Court of Appeals (19a) and do not contest them in this Court.

In the four years since the judgment was signed, the parties and the District Court have repeatedly interpreted its provisions to

permit recommendation and order of "significant matters" (15a) not specifically addressed in the Judgment if such actions are "necessary to achieve . . . compliance with the provisions of the Judgment." (14a-15a, 22a)

In short, within the "four corners" of this Consent Judgment is agreement on a "self-executing mechanism for flexibility" (23a) that "has been of utmost importance in the ongoing attempt to implement the Consent Judgment." (22a) That mechanism, as contemplated by, agreed to by, and interpreted by the parties, was utilized in this matter. The order appealed from is thus well within the limits established by prior decisions of this Court for construction of consent decrees.*

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*/ Petitioners also argue that they were prejudiced because the order appealed from was a modification of the Court Judgment as to which they did not receive proper notice and were held to an improper burden of proof. However, even if this order were considered a modification of the Consent Judgment pursuant to F.R. Civ. Pro. Rule 60 or the relevant provision of the Judgment (58a), petitioners were not prejudiced in any way. By the time of the District Court hearing on the Review Panel's formal recommendation, petitioners had had notice of the issues to be raised at the hearing for more than one year. A full evidentiary hearing was held on the issue. (35a, 53a) Finally, as in a modification, the Willowbrook Review Panel and the plaintiffs assumed the burden of proof by a preponderance of the evidence. (13a)

B. The Eleventh Amendment.

As the Court of Appeals noted, "the Eleventh Amendment . . . is not applicable to this case. Here involved is purely prospective relief applied to meet the requirements of constitutional law. . . . Moreover, the Consent Judgment itself would constitute a waiver of Eleventh Amendment immunity." (26a) See Milliken v. Bradley, 433 U.S. 267 (1977)

C. Vagueness.

Petitioners have obeyed the District Court's order during this appeal, no stay having been sought or obtained, and thus their argument that they cannot comply is specious. Moreover, the District Court decision properly "leaves it to the state officials themselves to determine the exact means by which to implement the order, appropriately wary of super[vising state] officials in the proper performance of their governmental functions." (25a) Finally, the order is phrased in exactly the language of the Consent Judgment which state officials signed and to which they have never before objected. (26a)

II. THE QUESTIONS PRESENTED BY PETITIONERS ARE NOT OF BROAD PUBLIC IMPORTANCE AND DO NOT WARRANT REVIEW BY THIS COURT.

The Consent Judgment in this case and the implementation mechanisms with which this petition is concerned are "unique in the country." (9a) An opinion by this Court on the questions presented by petitioners herein would affect this case and only this case and would have no implications for the settlement of other litigation by public officials. More-

over, this Court has noted that special deference should be paid to the findings of a District Court which, as here, has had years of experience in attempting to implement a complex order. Hutto v. Finney, __U.S.__, 57 L.Ed. 2d 522, 533 (1978). In short, the questions presented herein have limited importance for other cases and are not of sufficient importance to warrant review. U.S. Sup. Ct. Rules, Rule 19 (1)(b).

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

CHRISTOPHER A. HANSEN
New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011
(212) 924-7800

KALMAN FINKEL, Attorney in Charge
Legal Aid Society, Civil Division
JOHN KIRKLIN
Director of Litigation
CAROL KELLERMANN, of counsel
Civil Appeals & Law Reform Unit
11 Park Place - 8th Floor
New York, New York 10007
(212) 227-2755

JACK BERNSTEIN
Protection and Advocacy System for
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175 Fifth Avenue
New York, New York 10011
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Plaintiffs

MICHAEL S. LOTTMAN
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Room 6325
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(212) 488-4770

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Willowbrook Review Panel